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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 673

ROY CHARLES THOMPSON, Debtor-Bankrupt,
Petitioner (Appellee Below),

vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

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vs.

FARMERS BANK OF LOHMAN, Lohman, Missouri,
Respondent (Appellant Below).

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows to the court:

That your said petitioner is a resident of the County of Cole, in the Western District of Missouri, and debtor-bankrupt under the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)); that he is aggrieved by the judgment and order of the United States Circuit Court of Appeals for the Eighth Circuit, entered on the 24th day of December, 1943, (R. 21-23), holding that no part of the "rentals" paid by him under the Act during the proceeding "is deductible as 'payments on principal' from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from

the mortgage", reversing the judgment of the United States District Court for the Western District of Missouri, and your petitioner files this his petition for writ of certiorari to review the proceedings had in the United States Circuit Court of Appeals for the Eighth Circuit.

Your petitioner files herewith a certified transcript of the record in this case, together with supporting brief as required by the rules of this Honorable Court.

I. Summary Statement of Matter Involved.

The debtor filed his petition under Section 75 of the Bankruptcy Act, as amended, and failing to obtain confirmation of his extension and composition proposal, amended his petition and was adjudged bankrupt under subsection (s) of the Act. (R. 2, 7). Both secured and unsecured claims were filed and allowed against the debtor and his estate totalling considerably in excess of the appraised value of his real and personal property, which was all subject to mortgages, and which property, both real and personal, was appraised at the value of $7,296.67. (R. 2-3, 7-8).

The Conciliation Commissioner ordered the debtor to pay the sum of $665.00 per annum as "rental" under the provisions of the Act, which was paid into court each year by the debtor during the three-year period and he retained possession of his property. The total of the "rental" payments aggregated $1,995.00, and after the amounts necessary for payment of taxes and for upkeep of the property had been deducted therefrom, there remained a net balance at the end of the three year stay period in the sum of $1,597.58 undistributed. No part of this fund was distributed to the creditors and applied on their claims during the proceeding. (R. 4, 8).

At the end of the proceeding neither the debtor nor his creditors requested reappraisal of the property, but accepted the appraisal made at the outset of the proceeding, (R.8) and

the debtor pursuant to the order of the Conciliation Commissioner, although objecting, (Supplemental Finding of fact, R. 5-6) deposited in court the full amount of the appraised value of his property, both real and personal, in the sum of $7,296.67, (R. 8) which was borrowed by the debtor for that purpose and did not consist of assets of the estate nor earnings from the property, (R. 4-5) and the Conciliation Commissioner then entered an order turning over to the debtor all of his property free and clear of encumbrances, and ordered distribution of the amount to the secured creditors, who requested confirmance of the order. (R. 3-8).

The Conciliation Commissioner then ordered distribution of the net rental fund in the aforesaid sum of $1,597.58, (Order of Distribution, R. 1-2) less administrative expense, to the unsecured creditors, (R. 3-8). The debtor unsuccessfully objected to this order, contending that the net rentals, after payment of taxes and upkeep of the property, should have been distributed by the Conciliation Commissioner to the secured creditors during the course of the proceeding and applied on their claims as their interests appeared, thus reducing by like amount the appraised value of his property he was required to pay into court at the end of the proceeding to redeem his property under the Act, and that by reason of his compliance with the order requiring him to deposit in court the full appraised value of his property, over his objection, the amount of the net rentals should be refunded to him, (R. 3) and he filed his petition for review of that order by the District Court. (R. 4, 8). The District Court held that the net rentals, after payment of taxes, upkeep and administrative expense, should have been applied to the principal of the secured debts, thus reducing by an equal amount the $7,296.67 the debtor was required to pay into court to redeem his mortgaged property, and entered judgment reversing the order of the Conciliation Commissioner and remanding the proceeding, and in effect directed refund of the net rentals in the

sum of $1,597.58 to the debtor. (R. 6-7, 13). The Farmers Bank of Lohman, as an unsecured creditor, appealed from the judgment of the District Court to the United States Circuit Court of Appeals for the Eighth Circuit, (R. 13-14) and that court on appeal held that no part of the rental payments made by the farmer-debtor after adjudication in bankruptcy and during the three-year period is deductible as "payment on principal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage, reversing the judgment of the District Court and remanding the case with instructions to enter judgment and proceed in accordance with the opinion of the Circuit Court of Appeals, (R. 21-23) and your petitioner now asks issuance of a writ of certiorari to review the judgment of that court.

By stipulation of counsel (R. 16) only those parts of the record in this case before the Conciliation Commissioner and the District Court deemed necessary to enable the court on appeal to determine the question presented were certified to the United States Circuit Court of Appeals for the Eighth Circuit, and certified to this Honorable Court in the Transcript of Record filed herewith, and reference herein to matters in the record are as contained in the Finding of Fact (R. 2-4), Supplemental Finding of Fact (R. 5-6), and the Judgment and Opinion of the District Court (R. 6-13).

Question Presented.

The question presented in this case involves the construction of the provisions of Section 75, subsection (s), paragraphs (2) and (3) of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s), paragraphs (2) and (3)), and the interpretation of the provisions thereof in accordance with the intent of Congress in enacting the measure. It involves an important question in the administration of that section of the Bankruptcy Act, and is briefly stated as follows:

Is the debtor entitled to have the net balance of the rentals paid into court during the proceeding, after payment of taxes and upkeep on the property, distributed to the secured and unsecured creditors, as their interests appear, and applied on their claims as "payments on principal" under the Act, thus reducing by like amount the appraised or reappraised value of his property he is required to pay into court at the end of the proceeding to redeem his property, (and by reason of having deposited in Court pursuant to the Order of the Conciliation Commissioner, over his objection, the entire appraised value of his property, is he entitled to refund of the net rental fund), or is the net rental fund to be distributed to his creditors and applied on their claims as rental for the use and occupancy of the property during the proceeding, or as interest on his indebtedness during the three-year period, thus requiring the debtor to pay the full appraised value of his property, in addition to the amount of the rental fund paid to his creditors and applied on their claims, in order to redeem his property under the Act?

II. **Reasons Relied on for Allowance of Writ.**

1. That the decision of the United States Circuit Court of Appeals in this case, by holding that no part of the rental payments made by a farmer-debtor after adjudication in bankruptcy during the three-year period is deductible as "payments on principal" from the reappraised value of the mortgaged property which the debtor is required to pay under the Act to redeem from the mortgage, has decided a federal question under the Bankruptcy Act of substance and of general importance to financially distressed farmers seeking relief under the provisions of Section 75, subsection (s), of the Bankruptcy Act (11 U. S. C. A., Section 203, subsection (s)), relating to the construction of that statute, and particularly paragraphs (2) and (3) thereof, and involves an important question of administration of the Act, which is material and

adversely affects the ability of the farmer-debtor to obtain financial rehabilitation contrary to purpose of the Act and the controlling decisions of this court, and which question has not been, but should be, settled by this court.

(a) This court has repeatedly held that the purpose of the aforesaid section of the bankruptcy Act is to provide a broad program for the financial rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt.

> Wright vs. Union Central Life Ins. Co., 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4), 85 L. Ed. 184 (cases cited therein).

2. That the decision of the United States Circuit Court of Appeals for the Eighth Circuit in this case, by holding that no part of the rental payments made by a farmer-debtor is deductible as "payments on principal" under the Act, as set out in the next preceding paragraph, has decided a federal question under the Bankruptcy Act in a way probably in conflict with applicable decisions of this court.

(a) The United States Circuit Court of Appeals in the opinion in this case has construed the statute contrary to the purpose of the Act, and contrary to the applicable decisions of this court.

> Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4) 199, 85 L. Ed. 184 (and cases cited therein).

(b) The United States Court of Appeals in the opinion in this case has construed the provisions of the Act strictly against the farmer-debtor, resolving any and all doubts and ambiguities in the Act in favor of the creditors, contrary to the decisions of this Court.

> Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, (2-4) 200, 85 L. Ed. 184 (and cases cited therein).

(c) The opinion of the United States Circuit Court of Appeals in this case fails to follow the mandatory provisions of the Act, contrary to the decisions of this court.

Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-281, 61 S. Ct. 196, 199-201, 85 L. Ed. 184.

(d) The decision of the United States Circuit Court of Appeals for the Eighth Circuit requires the debtor to pay in to court, to be applied on the claims of his creditors, an amount in excess of the value of his property as determined by the appraisal thereof, in order to redeem the property under the Act, contrary to the decisions of this court.

Wright vs. Union Central Life Insurance Company, 311 U. S. 273, 278-279, 61 S. Ct. 196, 199-200, 85 L. Ed. 184 (and cases cited therein).

3. There is a diversity of opinion among the District Courts as to the construction of the provisions of Section 75, subsection (s), paragraphs (2) and (3) of the Bankruptcy Act (11 U. S. C. A., Sec. 203, subsec. (s), paragraphs (2) and (3), relative to the application of net rental funds as payments on principal under the Act, resulting in confusion and uncertainty in the administration of the Act.

In re Dewey, (D. C. Mo.) not reported, (opinion of District Court reversed in Wilson v. Dewey, 133 F. (2d) 962);
In re Ezell, (D. C. Mo.) 45 F. Supp. 164;
In re Rider, (D. C. Iowa) 40 F. Supp. 882;
In re Thompson, (D. C. Mo.) 48 F. Supp. 557 (opinion of District Court reversed in Farmers Bank of Lohman v. Thompson, not yet reported, R. 21-22).

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of

the said United States Circuit Court of Appeals for the Eighth Circuit had in the case numbered and entitled on its docket, No. 12, 538, Farmers Bank of Lohman, Lohman, Missouri, Appellant vs. Roy Charles Thompson, Debtor-Bankrupt, Appellee, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States, and that the judgment herein of the said United States Circuit Court of Appeals for the Eighth Circuit be reversed by this court, and for such further relief as to the court may seem proper.

Dated at the City of Jefferson, in the County of Cole, in the Western District of Missouri, this 31st day of January, 1944.

Respectfully submitted:

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